

ESTTA Tracking number: **ESTTA556424**Filing date: **08/27/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Whole Foods Market IP, L.P.		
Entity	Partnership	Citizenship	Delaware
Composed Of:	WFM IP Management, Inc.		
Address	550 Bowie, 6th Floor Austin, TX 78703 UNITED STATES		

Attorney information	Jered E. Matthyse Pirkey Barber PLLC 600 Congress Avenue, Suite 2120 Austin, TX 78701 UNITED STATES jmatthyse@pirkeybarber.com, cgraff@pirkeybarber.com, smeleen@pirkeybarber.com, drausa@pirkeybarber.com, tmcentral@pirkeybarber.com Phone:512-322-5200
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Registration Subject to Cancellation

Registration No	3777229	Registration date	04/20/2010
Registrant	Kd Did Inc. 4001 Prado Del Trigo Calabasas, CA 91302 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2002/04/01 First Use In Commerce: 2002/04/01 All goods and services in the class are cancelled, namely: Dietary and nutritional supplements; Nutritional supplement for eliminating toxins from the intestinal tract; Nutritional supplements; Powdered nutritional supplement drink mix, all containing whole foods and vitamin C

Grounds for Cancellation

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2701610	Application Date	01/08/1999
Registration Date	04/01/2003	Foreign Priority	NONE

		Date	
Word Mark	WHOLE FOODS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1997/01/00 First Use In Commerce: 1997/01/00 Hair shampoo, skin soap, skin lotion, and hair conditioners		

U.S. Registration No.	1961586	Application Date	10/11/1994
Registration Date	03/12/1996	Foreign Priority Date	NONE
Word Mark	WHOLE FOODS MARKET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1980/09/30 First Use In Commerce: 1980/09/30 retail grocery store services, in-store restaurant services, and in-store bakery services specializing in health foods and natural foods		

U.S. Registration No.	1557320	Application Date	01/04/1988
Registration Date	09/19/1989	Foreign Priority Date	NONE
Word Mark	WHOLE FOODS MARKET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1980/09/30 First Use In Commerce: 1980/09/30 RETAIL GROCERY STORE SERVICES, IN-STORE RESTAURANT SERVICES, AND IN-STORE BAKERY SERVICES IN HEALTH FOODS AND NATURAL FOODS		

U.S. Registration No.	3212836	Application Date	02/20/2006
Registration Date	02/27/2007	Foreign Priority Date	NONE
Word Mark	WHOLE FOODS WHOLE PEOPLE WHOLE PLANET		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1997/12/00 First Use In Commerce: 1998/07/00 Hats, caps, shirts, jackets, aprons		

Attachments	CATIE'S WHOLE FOOD VITAMIN C PLUS Petition for Cancellation (WFMV5452US1).pdf(684337 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/JEM/
Name	Jered E. Matthyse
Date	08/27/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In Re Registration No. 3,777,229
Mark: CATIE'S WHOLE FOOD VITAMIN C PLUS
Registrant: Kd Did Inc.
Issued: April 20, 2010

Whole Foods Market IP, L.P.,)	
)	
Petitioner,)	
)	Cancellation No. _____
v.)	
)	
Kd Did Inc. d/b/a Energy Essentials,)	
)	
Registrant.)	

PETITION FOR CANCELLATION

Petitioner, Whole Foods Market IP, L.P., a Delaware limited partnership with a principal place of business at 550 Bowie, 6th Floor, Austin, Texas 78703, believes that it is or will be damaged by Registration No. 3,777,229 and hereby petitions to cancel the same under the provisions of 15 U.S.C. § 1064(1). As grounds for cancellation, Petitioner alleges that:

1. Petitioner is the owner of the well-known WHOLE FOODS family of marks, which have been used for several years in connection with an extremely successful chain of retail grocery stores, as well as a wide variety of goods and services, including dietary and nutritional supplements.

2. Petitioner's use of its WHOLE FOODS marks has been continuous and extensive.

3. Petitioner's WHOLE FOODS marks are well known in the industry and marketplace, and have been featured in leading publications such as THE NEW YORK TIMES, THE CHICAGO TRIBUNE, FORTUNE magazine, THE WASHINGTON POST, THE LOS ANGELES TIMES, and SLATE

magazine, as well as on national television programs aired on networks such as Bravo, MTV, and The Food Network.

4. As a result of Petitioner's extensive use and promotion of its WHOLE FOODS marks, the marks have become distinctive and are widely recognized by consumers. Petitioner has invested significant effort and resources in advertising and promoting its WHOLE FOODS marks and the goods and services sold under those marks, with the result that the purchasing public has come to know, rely on, and recognize the goods and services of Petitioner by those marks. Petitioner has established significant goodwill in its WHOLE FOODS marks.

5. Petitioner's WHOLE FOODS marks have become famous for all purposes relevant to this proceeding, including within the meaning of 15 U.S.C. § 1125(c)(2)(A).

6. In addition to its extensive common law rights, Petitioner is the owner of numerous United States Trademark Registrations covering its WHOLE FOODS marks, including the following:

Mark	Registration No.	Registration Date
WHOLE FOODS (Stylized)	2,701,610	April 1, 2003
WHOLE FOODS MARKET	1,961,586	March 12, 1996
WHOLE FOODS MARKET (Stylized)	1,557,320	September 19, 1989
WHOLE FOODS WHOLE PEOPLE WHOLE PLANET	3,212,836	February 27, 2007

7. Registrant Kd Did Inc. d/b/a Energy Essentials is a California corporation with an address of 4001 Prado Del Trigo, Calabasas, California 91302. Registrant is the listed owner of Registration No. 3,777,229 (the "Registration") for the mark CATIE'S WHOLE FOOD VITAMIN C PLUS ("Registrant's Mark") covering "Dietary and nutritional supplements; Nutritional supplement for eliminating toxins from the intestinal tract; Nutritional supplements; Powdered

nutritional supplement drink mix, all containing whole foods and vitamin C” in Class 5.

8. Registrant claims a first use-date of April 1, 2002.

9. There is no issue as to Petitioner’s priority. Petitioner’s first use in commerce of the WHOLE FOODS marks long precedes the Registrant’s first-use date.

10. Petitioner’s WHOLE FOODS marks became famous prior to Registrant’s claimed first-use date.

11. The wording WHOLE FOOD is a dominant portion of Registrant’s Mark, and is substantially identical to Petitioner’s WHOLE FOODS marks.

12. Registrant’s goods are identical, or highly similar or related to, the goods and services for which Petitioner has long used and registered its WHOLE FOODS marks.

13. Registrant’s goods travel in the same or similar channels of trade as Petitioner’s goods and services, and are or will be purchased and used by the same or similar types of consumers who purchase and use Petitioner’s goods and services.

14. Petitioner has not given Registrant permission or approval to use or register Registrant’s Mark.

15. Accordingly, Registrant’s Mark so resembles Petitioner’s WHOLE FOODS marks as to be likely, when used on or in connection with the identified goods of Registrant, to cause confusion, or to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the products Registrant offers under Registrant’s Mark are produced, sponsored, endorsed, or approved by Petitioner, or are in some way affiliated, connected, or associated with Petitioner or its WHOLE FOODS products and services. The Registration should therefore be cancelled under 15 U.S.C. §§ 1052(d) and 1064(1).

16. Further, Registrant's Mark is likely to cause dilution by blurring of Petitioner's famous WHOLE FOODS marks, and the Registration should therefore be cancelled pursuant to 15 U.S.C. §§ 1125(c) and 1064(1).

17. As an alternative and additional basis, the Registration should be cancelled because Registrant has abandoned Registrant's Mark.

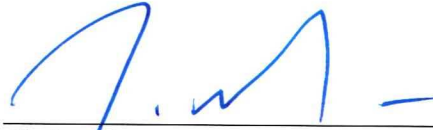
18. Upon information and belief, Registrant has never made any bona-fide use of Registrant's Mark in the ordinary course of trade. In particular, Registrant is using the mark CATIE'S **ORGANIC** VITAMIN C PLUS (emphasis added), as shown in Registrant's original specimen. Further, upon information and belief, Registrant has not used Registrant's Mark for at least three consecutive years, and does not intend to commence or to resume use of said mark. Thus, the Registration should also be cancelled pursuant to 15 U.S.C. § 1064(3).

19. Registration of Registrant's Mark on the Principal Register is inconsistent with Petitioner's rights to use the WHOLE FOODS marks under the aforementioned registrations and common law and is damaging to Petitioner.

WHEREFORE, Petitioner is or will be damaged by Registration No. 3,777,229 and petitions for cancellation thereof.

This Petition for Cancellation is being filed electronically, along with the filing fee required by 37 C.F.R. § 2.6(a)(16). The Commissioner is authorized to draw on the Deposit Account of Pirkey Barber PLLC, Account No. 50-3924/WFMV:5452/CLG, if there is any problem with the processing of the electronically submitted fee.

Respectfully submitted,



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ATTORNEYS FOR PETITIONER

Date: August 27, 2013

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing PETITION FOR CANCELLATION was served via first-class mail, postage prepaid, on August 27, 2013 on Registrant at the following address:

Kd Did Inc.
4001 Prado Del Trigo
Calabasas, CA 91302

with a courtesy copy to:

Bruce Margulies
Neifeld IP Law, PC
4813-B Eisenhower Avenue
Alexandria, VA 22304

